

# § 1.995-6

# 26 CFR Ch. I (4-1-08 Edition)

(2) Investment during 1975:	
(a) Fair market value of Q's foreign assets described in paragraph (b)(2) of this section on July 15, 1975 .....	\$5,500,000
(b) Multiply by additional percentage acquired of total combined voting power of all classes of Q stock entitled to vote .....	.3
(c) Investment during 1975 .....	\$1,650,000
(3) Amount considered expended for foreign assets described in paragraph (b)(2) of this section by reason of the acquisition of Q stock .....	
	\$5,150,000

(f) *Records.* A DISC shall keep or be readily able to produce such permanent books of account or records as are sufficient to establish the transactions and amounts described in this section. Where applicable, such books of account or records shall be cumulative and shall show transactions and amounts of the members of the controlled group which includes the DISC which occurred prior to the date the DISC qualified (or is treated) as a DISC.

(g) *Multiple DISC's*—(1) *Allocation among DISC's.* In the case of a controlled group which includes more than one DISC, the amounts described in paragraphs (b) and (c) of this section shall be allocated among the DISC's in order to determine the limitation in paragraph (a) of this section. Each DISC's allocable portion of these amounts shall be equal to the total of such amounts multiplied by a fraction the numerator of which is the individual DISC's outstanding producer's loans to members of the group, and the denominator of which is the aggregate amounts of outstanding producer's loans to members of the group by all DISC's which are members of the group.

(2) *Different taxable years.* If all of the DISC's which are members of the controlled group do not have the same taxable year, then one such DISC shall on behalf of all such DISC's elect to make all computations under section 995(d) as if all DISC's that are members of the group use the same taxable year as the actual taxable year of any one of the DISC's. The election as to which DISC's taxable year is to be used shall be made by the electing DISC attaching to its first return, filed under section 6011(e)(2), a statement indicating which such taxable year will be used. Once such an election is made it may

not be revoked until such time as all of the DISC's which are members of the group use the same taxable year. If this subparagraph applies, books and records must be kept by the group which are adequate to show the necessary computations under section 995(d).

(3) This paragraph may be illustrated by the following example:

*Example.* Corporation X and corporation Y are members of the same controlled group and each has elected to be treated as a DISC. X uses a taxable year ending March 31, and Y uses a taxable year ending November 30. Notwithstanding the fact that all other members of the group use the calendar year as their taxable year, all computations for purposes of determining the amount of foreign investment attributable to producer's loans under section 995(d) must be made as if both DISC's use a taxable year ending either March 31 (X's taxable year) or November 30 (Y's taxable year).

[T.D. 7324, 39 FR 35114, Sept. 30, 1974, as amended by T.D. 7420, 41 FR 20655, May 20, 1976; T.D. 7854, 47 FR 51742, Nov. 17, 1982]

## § 1.995-6 Taxable income attributable to military property.

(a) *Gross income attributable to military property.* For purposes of section 995(b)(3)(A)(i), the term "gross income which is attributable to military property" includes income from the sale, exchange, lease, or rental of military property (as described in paragraph (c) of this section). The term also includes gross income from the performance of services which are related and subsidiary (as defined in § 1.993-1(d)) to any qualified sale, exchange, lease, or rental of military property. Where gross income cannot be determined on an item by item basis, the gross income with respect to those items not so determinable shall be apportioned. Such apportionment shall be accomplished using appropriate facts and circumstances, so that the gross income apportioned to sale of military property bears a reasonably close factual relationship to the actual gross income earned on such sales. The apportionment shall be based on methods which include the fair market value of property sold or exchanged, the fair rental value of any leaseholds granted, the

fair market value of any related or subsidiary services performed in connection with such sale or leases or methods based on gross receipts or costs of goods sold, where appropriate.

(b) *Deductions.* For purposes of section 995(b)(3)(A)(ii), deductions shall be properly allocated and apportioned to gross income, described in paragraph (a) of this section, in accordance with the rules of §1.861-8. These deductions include all applicable deductions from gross income provided under part VI of subchapter B of chapter 1 of the Code.

(c) *Military property.* For purposes of this section, the term *military property* means any property which is an arm, ammunition, or implement of war designated in the munitions list published pursuant to section 38 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2778 which superseded 22 U.S.C. 1934) and the regulations thereunder (22 CFR 121.01).

(d) *Illustration.* The principles of this section may be illustrated by the following example:

*Example.* X Corporation elects to be a DISC for the first time in 1976. X has taxable income of \$50,000, of which \$30,000 is attributable to military property and \$10,000 to interest on producer's loans. The total deemed distributions with respect to X are as follows:

(1) Gross interest from Producer's loans in 1976	\$10,000
(2) 50 percent of the taxable income of the DISC attributable to military property in 1976	15,000
(3) One-half of the excess of taxable income for 1976 over the sum of lines (1) and (2) (½ of (\$50,000 minus \$25,000))	12,500
(4) Total deemed distributions (sum of total lines (1), (2), and (3))	37,500

(Secs. 995(e)(7), (8) and (10), 995(g) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1655, 26 U.S.C. 995 (e)(7), (8) and (10); 90 Stat. 1659, 26 U.S.C. 995(g); and 68A Stat 917, 26 U.S.C. 7805))

[T.D. 7984, 49 FR 40019, Oct. 12, 1984]

#### § 1.996-1 Rules for actual distributions and certain deemed distributions.

(a) *General rule.* Under section 996(a)(1), any actual distribution (other than a distribution described in paragraph (b) of this section or to which §1.995-4 applies) to a shareholder by a DISC, or former DISC, which is made out of earnings and profits shall be treated as made—

(1) First, out of “previously taxed income” (as defined in §1.996-3(c)) to the extent thereof,

(2) Second, out of “accumulated DISC income” (as defined in §1.996-3(b)) to the extent thereof, and

(3) Third, out of “other earnings and profits” (as defined in §1.996-3(d)) to the extent thereof.

(b) *Rules for qualifying distributions and deemed distributions under section 995(b)(1)(G).*—(1) *In general.* Except as provided in subparagraph (2), any actual distribution to meet qualification requirements made pursuant to §1.992-3 and any deemed distribution pursuant to §1.995-2(a)(5) (relating to foreign investment attributable to producer's loans) which is made out of earnings and profits shall be treated as made—

(i) First, out of “accumulated DISC income” (as defined in §1.996-3(b)) to the extent thereof.

(ii) Second, out of “other earnings and profits” (as defined in §1.996-3(d)) to the extent thereof, and

(iii) Third, out of “previously taxed income” (as defined in §1.996-3(c)) to the extent thereof.

(2) *Special rule.* For taxable years beginning after December 31, 1975, paragraph (b)(1) of this section shall apply to one-half of the amount of an actual distribution made pursuant to §1.992-3 to satisfy the condition of §1.992-1(b) (the gross receipts test) and paragraph (a) of this section shall apply to the remaining one-half of such amount.

(c) *Exclusion from gross income.* Under section 996(a)(3), amounts distributed out of previously taxed income shall be excluded by the distributee from gross income. However, see §1.996-5(b) for treatment as gain from the sale or exchange of property of the portion of an actual distribution out of previously taxed income to the extent it exceeds the adjusted basis of the stock with respect to which the distribution is made.

(d) *Priority of distributions.* Under section 996(c), for purposes of determining their treatment under paragraphs (a), (b), and (c) of this section, distributions made during a taxable year shall be treated as being made in the following order—

(1) Deemed distributions under §§1.995-2 and 1.995-3.